

STATE OF NORTH CAROLINA
COUNTY OF WAKE

BEFORE THE
SECRETARY OF REVENUE

IN THE MATTER OF:)
)
The Motor Fuels destination state)
penalty assessment proposed)
January 22, 2003 by the North)
Carolina Secretary of Revenue)
)
vs.)
)
[Taxpayer])

FINAL DECISION
Docket No. 2003-263

This matter was heard before the undersigned Assistant Secretary for Administrative Tax Hearings, Eugene J. Cella, in Raleigh, North Carolina on June 16, 2003. [Taxpayer's Vice President and Director of Operations and Safety] represented [Taxpayer]. Scotty P. Miller, Tax Auditor and Christopher E. Allen, General Counsel represented the Motor Fuels Tax Division.

ISSUE

Whether the Secretary should waive the \$5,000.00 civil penalty assessment issued by the Division on January 22, 2003 pursuant to G.S. 105-449.115 against Taxpayer for transporting motor fuel without a shipping document as required by the State Motor Fuels Tax Laws.

EVIDENCE

The parties introduced the following items into evidence:

1. Division Status Report dated January 21, 2003 prepared by Investigator D. R. Farmer.
2. Civil Penalty Assessment for \$5,000.00 issued by the Division against Taxpayer dated January 22, 2003.
3. Facsimile transmission dated January 31, 2003 from Taxpayer to Investigator D. R. Farmer containing copy of a bill of lading (BOL) or shipping document, together with supporting documentation for the load delivered January 22, 2003.
4. Letter dated April 17, 2003 from [Vice President of Taxpayer] to Christopher E. Allen, Division Counsel, enclosing payment of penalty under protest and a demand for an administrative hearing, together with supporting documentation.

5. Letter dated June 3, 2003 from Eugene J. Cella to [Vice President of Taxpayer] scheduling a hearing of this matter for June 16, 2003.
6. Memorandum dated May 16, 2001 from Secretary of Revenue E. Norris Tolson to Eugene J. Cella authorizing Mr. Cella to conduct administrative tax hearings.

The Division submitted a brief for tax hearing with the attached exhibits.

FINDINGS OF FACT

Based upon the foregoing evidence of record, the Assistant Secretary for Administrative Tax Hearings makes the following findings of fact:

1. On January 22, 2003, Motor Fuels Tax Investigator D. R. Farmer, and Investigations Supervisor Martin Barrow of the Motor Fuels Tax Division, Department of Revenue (hereinafter "Division"), observed a transport truck belonging to [Taxpayer] at [a store] in [North Carolina].
2. [Taxpayer's employee] was unloading fuel into the storage tanks of [the store].
3. The investigators identified themselves and requested the shipping documents for the load he was delivering to the retail station.
4. [Taxpayer's employee] replied that he had forgotten to get the bill of lading (BOL) when he left the terminal, and stated that this was his second load of the day.
5. The Division Investigator issued a penalty assessment on January 22, 2003 against Taxpayer for transporting fuel without a proper shipping document pursuant to G.S. § 105-449.115(f).
6. On January 31, 2003, Taxpayer sent to Investigator Farmer via facsimile transmission a copy of the shipping document (BOL), together with supporting documentation for the load delivered January 22, 2003.
7. Investigator Farmer received the shipping document nine (9) days after he made the request to the driver of Taxpayer's transport truck to produce the shipping document for the fuel delivered to [the store] on January 22, 2003.
8. Taxpayer requested a hearing by letter sent certified mail dated April 17, 2003, and included payment of the penalty assessment under protest.
9. Payment of the civil penalty assessment and request for hearing was not made within thirty (30) days as required by G.S. 105-449.119.
10. Taxpayer also included copies of the January 22, 2003 civil penalty assessment, the bill of lading, and a copy of the notice of final assessment dated April 2, 2003.

11. The Division previously final-billed this matter pursuant to G.S. §§ 105-241.1 and 105-449.119, as it received payment and demand for refund more than thirty (30) days after the penalty was imposed.
12. The Division nevertheless referred the matter to the Office of the Secretary of Revenue for an administrative hearing.
13. By letter dated June 3, 2003, Eugene J. Cella notified Taxpayer of the hearing of this matter scheduled for June 16, 2003.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the undersigned Assistant Secretary of Tax Administration makes the following conclusions of law:

1. G.S. 105-449.115 expressly mandates that a person may not transport motor fuel by railroad tank car or transport truck unless the person has a shipping document.
2. Subsection (d) of G.S. 105-449.115 requires that a transporter to whom a shipping document is issued must fulfill four (4) statutory requirements. The transporter must:
 - (1) Carry the shipping document in the conveyance,
 - (2) Show the document to a law enforcement officer upon request,
 - (3) Deliver the fuel described in the shipping document to the indicated destination state, and
 - (4) Give a copy of the shipping document to the distributor or other person receiving the shipment.
3. Subsection (f) of G.S. § 105-449.115 imposes a penalty of \$5,000.00 for transporting motor fuel in a transport truck without a shipping document or with a false or an incomplete shipping document.
4. Taxpayer did not timely pay the civil penalty assessment and request a refund pursuant to G.S. 105-449.119.
5. G.S. 105-237 grants the Secretary authority to waive or reduce penalties provided for in Subchapter I of Chapter 105, the Revenue Laws of North Carolina.
6. Taxpayer has not proffered any evidence or argument sufficient to merit the exercise of authority by the Secretary pursuant to G.S. 105-237 to reduce or waive the penalty assessed herein.

DECISION

WHEREFORE, based upon the above findings of fact and conclusions of law drawn therefrom, the undersigned Assistant Secretary of Revenue finds that the Taxpayer has not shown reasonable cause to waive the penalty assessed by the Motor Fuels Tax Division, and **HEREBY AFFIRMS** in its entirety the proposed civil assessment of \$5,000.00 on January 22, 2003.

This the 15th day of September 2003.

Signature _____

Eugene J. Cella
Assistant Secretary of Revenue